In the Supreme Court of the United States

OCTOBER TERM, 1967.

No. 1214.

DONALD SMELTZ BUTLER,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

SUPPLEMENT TO APPENDIX TO PETITION FOR A WRIT OF CERTIORARI.

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EXCERPT FROM TABLE OF CONTENTS OF APPELLANT'S APPENDIX IN COURT OF APPEALS.

LIST OF MATTER DESIGNATED FOR INCLUSION IN DEFENDANT-APPELLANT'S APPENDIX BUT NOT PRINTED HEREIN.

[Note: The following items originally designated for inclusion in the Appendix are not printed in this volume, but pursuant to motion of the appellant granted by the court on February 9, 1967 four copies of the exhibits in which they appear have been filed with the court. In those copies of the exhibits the designated items have been marked in red ink for ready identification.]

17. From defendant's Exhibit 7 (110 CR 15365-15372), the following portions of the speech of Senator Nelson:

A. Defendant's Exhibit 7A (110 CR 15365), column 1, lines 5 to 11, beginning "A plan to end the draft in 1967" and ending "* * * with me on the bill."

B. That portion of the speech of Senator Nelson that begins on defendant's Exhibit 7A (110 CR 15365) in column 2 at line 12 ("My own study has led me to this conclusion: * * *") and ends on defendant's Exhibit 7F (110 CR 15370), column 2, line 29 ("* * * be printed at the conclusion of my remarks.").

18. From defendant's Exhibit 7 the following portions of the speeches by Senator McGovern and Senator Keating:

A. On Exhibit 7G (110 CR 15371), column 1, line 5 ("AN ALTERNATIVE TO THE MILITARY DRAFT BY 1967") through line 12 ("* * * remarks on the military draft.").

B. Exhibit 7G (110 CR 15371), column 1, from line 27 ("The present system seems to me to be * * *") through line 42 ("* * * their heads.").

C. Exhibit 7G (110 CR 15371), column 1, line 52 ("MR. KEATING. I congratulate the * * *")

through Exhibit 7G (110 CR 15371), column 2, line 2, the first two words ("* * * fair statement.").

D. From defendant's Exhibit 7G (110 CR 15371), column 2, line 39 ("MR. KEATING. I thank the Senator.") through the end of defendant's Exhibit 7G (110 CR 15371).

19. From defendant's Exhibit 10, that portion of the speech of Senator Nelson made on February 9, 1965 that begins on Exhibit 10A (111 CR 2327 [temporary pagination]), column 3, line 4 ("A PAY RAISE FOR MEN IN THEIR * * *") and ends on defendant's Exhibit 10D (111 CR 2330 [temporary pagination]), column 2, lines 56 and 57 ("* * * pay raise for men in their first two years of service.").

20. From defendant's Exhibit 10 that portion of another speech by Senator Nelson on February 9, 1965 that begins on Exhibit 10G (111 CR 2333 [temporary pagination]), column 3, line 14 ("TOWARD ENDING RELIANCE ON THE MILITARY DRAFT"), and ends at the conclusion of the extension of his remarks on defendant's Exhibit 10J (111 CR 2336 [temporary pagination]), column 1, line 36 ("* * * a draftless military will have been taken.").

21. From defendant's Exhibit 14A, the statement of Representative Robert Ellsworth, the following portions:

A. From page 9756, line 9 ("STATEMENT OF HON. ROBERT ELLSWORTH, REPRESENTATIVE FROM KANSAS"), through line 39 ("* * * would require new legislation:").

B. Page 9757, line 13 ("There are four basic alternatives to the current system: Obligated * * *") through line 22 ("* * * seek; it is in fact what they came to avoid.").

C. From page 9758 the following language from lines 31 and 41 to 43:

"The concept of universal military training is abhorrent. * * * I am unalterably opposed to such a

program as undemocratic. The draft is justifiable only for military purposes—and only then when absolutely necessary. * * *"

D. From page 9759, lines 5 through 8 "I also oppose a lottery system * * * a totally irrational one.").

E. From page 9759, line 36 ("The basic concept which the Congress should accept is that the * * *") through page 9761, line 3 ("When we are determined to do it, it will be done.").

22. From defendant's Exhibit 14B, the testimony of Representative Curtis beginning on page 9784, line 7 ("STATEMENT OF HON. THOMAS B. CURTIS, REPRESENTATIVE FROM MISSOURI") through page 9786 line 44 ("* * * discussed in the Congressional Record, volume 106, part 7, pages 8446-8447.").

23. From Exhibit 14C, further evidence presented by Representative Curtis, from page 9790, lines 8 and 9 ("STATEMENT OF HON. THOMAS B. CURTIS, OF MISSOURI, BEFORE SENATE ARMS SERVICES COMMITTEE, MARCH 3, 1959") and that portion of his statement that begins on page 9791, line 54 ("I am concerned with the efficacy of the draft law in providing the type of * * *") and ends on page 9793, line 12 ("* * * you take the time to make this study.").

24. From Exhibit 14D, pages 9798 and 9799, a portion of the speech of Representative Lindsay in the House of Representatives on April 21, 1964 as follows:

A. From page 9798, line 25, the words: "MR. LINDSAY." From page 9798, line 49 ("My concern here today goes beyond * * *") to page 9799, line 54 ("* * * not have it in this area of our society as in others.").

25. From defendant's Exhibit 14E, the speech of Representative Taft in the House of Representatives on April 21, 1964, the following portions:

A. The last three lines on page 9802 and the first line on page 9803, the following language:

"Mr. Speaker, I would like to insert at this point the following memorandum that has been prepared for the use of the Members who have joined in this study group:

" 'MILITARY MANPOWER AND THE DRAFT' "

B. From page 9804, line 32 ("II. ARGUMENTS OFFERED FOR THE PRESENT SYSTEM.") through page 9807, line 51 ("* * * houses of prostitution, gambling joints, etc.").

C. From page 9808, line 60 ("V. REQUIREMENTS OF A GOOD MILITARY MANPOWER SYSTEM") through the end of page 9809 ("* * * in the light of its findings.").

26. From defendant's Exhibit 14F, the speech by Representative Del Clawson in the House of Representatives on April 21, 1964, page 9822, line 29 ("MR. DEL CLAWSON. Mr. Speaker, my distinguished colleague from New Hamp—* * *") to page 9823, line 40 ("Let us not do so any longer.").

27. From defendant's Exhibit 14G, the statement of Representative Kastenmeier, the following excerpts:

A. From page 9872 the following words:

"STATEMENT OF HON. ROBERT W. KASTENMEIER, A REPRESENTATIVE FROM WISCONSIN.

"Mr. Kastenmeier."

B. From page 9873, lines 1 ("The only reasonable alternative * * *") through line 7 ("* * * have in the past.").

C. From page 9875 the last three lines beginning, "As I mentioned earlier, * * *" through the first two lines on page 9877 ending "* * * these same objectives in our Military Establishment as well."

28. From defendant's Exhibit 14H, statement of Representative Tunney, the following excerpts:

A. From page 9877 the following words:

"STATEMENT OF HON. JOHN V. TUNNEY, REPRESENTATIVE FROM CALIFORNIA.

"MR. TUNNEY."

B. From page 9879, line 8 ("Due to the war in Vietnam, the percentage of new military personnel * * *"), through page 9880, line 23 ("* * * American men all of whom have volunteered to be there.").

29. From Exhibit 14I, the statement of Thomas D. Morris, Assistant Secretary of Defense, the following excerpts:

A. From page 9923, line 27 ("STATEMENT OF HON. THOMAS D. MORRIS, ASSISTANT SECRETARY * * *"), through the first word of line 37 ("* * * decade.").

B. From page 9938, line 22 "*(4) would improvements in pay and other manpower practices enable* * * *"), through page 9940, line 46 ("* * * ditions of full employment, and to continue attracting more volunteers.").

30. From Exhibit 14K, the statement by Mr. Slatinshek, beginning with the last line on page 9981 and ending with the end of the letter he presented to the committee on page 9983, line 30 (*"Acting General Counsel."*).